

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 JAMES HENRY GREEN,

10 *Petitioner,*

11 vs.

12 ELDON K. MCDANIEL, *et al.*,

13 *Respondents.*  
14  
15

3:11-cv-00161-HDM-VPC

ORDER

16 This habeas matter comes before the Court for initial review of the amended petition  
17 (#18) under Rule 4 of the Rules Governing Section 2254 Cases. Following initial review, a  
18 response will be directed.

19 IT THEREFORE IS ORDERED that the Clerk of Court shall add Attorney General  
20 Catherine Cortez Masto as counsel for respondents, and shall make informal electronic  
21 service of both the amended petition (#18) and this order upon respondents through her office  
22 in a manner consistent with the Clerk's current practice. The Clerk further shall regenerate  
23 notices of electric filing for all filings herein for respondents.

24 IT FURTHER IS ORDERED that respondents shall have **thirty (30) days** from entry  
25 of this order within which to respond to the petition, as amended. **Any response filed shall**  
26 **comply with the remaining provisions below, which are tailored to this particular case**  
27 **based upon the Court's screening of the matter and which are entered pursuant to**  
28 **Habeas Rule 4.**

1 IT FURTHER IS ORDERED that – for this particular case – respondents **shall** combine  
2 any procedural defenses with their response on the merits within a single consolidated  
3 response. Procedural defenses omitted from respondents’ single consolidated answer to the  
4 petition will be subject to potential waiver. In this regard, the Court is not inclined to dismiss  
5 the lay petitioner’s claims for alleged pleading insufficiency or to order further amendments  
6 to the pleadings. If an exhausted and similarly pled claim was rejected on the merits by the  
7 state supreme court, this Court is inclined to address the underlying merits issue of whether  
8 the state supreme court’s rejection of the claim as pled and presented in the state courts  
9 withstands review under 28 U.S.C. § 2254(d). While respondents of course may raise any  
10 available procedural defenses in their response, the Court does not wish to delay a resolution  
11 of the merits of the case for further pleading amendments. In the single consolidated  
12 response provided for by this order, respondents shall respond to the merits of the claims  
13 asserted even if they otherwise challenge the sufficiency of petitioner’s federal allegations.

14 IT FURTHER IS ORDERED that, in responding on the merits, respondents shall  
15 specifically cite to and address the applicable state court written decision and state court  
16 record materials, if any, regarding each claim within the response as to that claim.

17 IT FURTHER IS ORDERED that, with their response, respondents shall file a single  
18 set of state record exhibits relevant to the petition, in substantially chronological order and  
19 indexed as discussed, *infra*.

20 IT FURTHER IS ORDERED that all state court record exhibits filed herein shall be filed  
21 with a separate index of exhibits identifying the exhibits by number. The CM/ECF  
22 attachments that are filed further shall be identified by the number or numbers of the exhibits  
23 in the attachment, in the same manner as in No. 3:06-cv-00087-ECR-VPC, ## 25-71. The  
24 purpose of this provision is so that the Court and any reviewing court thereafter will be able  
25 to quickly determine from the face of the electronic docket sheet which exhibits are filed in  
26 which attachments.

27 IT FURTHER IS ORDERED that counsel additionally shall send a hard copy of all  
28 exhibits filed to, for this case, the **Las Vegas Clerk's Office**.

1           **IT FURTHER IS ORDERED** that no extensions of time should be sought based  
2 upon scheduling conflicts with other cases on the docket of this Court unless the other  
3 case was filed prior to this case, absent compelling circumstances.<sup>1</sup>

4           DATED: January 3, 2014.

5  
6           

7  
8           \_\_\_\_\_  
          HOWARD D. MCKIBBEN  
          United States District Judge

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26           \_\_\_\_\_  
27           <sup>1</sup> Respondents are not responsible for any delay in this case. The Court is seeking to resolve this  
28 case prior to resolving other cases on its docket that were filed later than this case. Accordingly, if counsel  
has competing scheduling demands in later-filed cases in this District, the Court would prefer to extend the  
deadlines in the later-filed case or cases rather than this case.